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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/687,387

10/16/2003

Bryan McCarrick

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7590

06/21/2006

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EXAMINER

LAVINDER, JACK W

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/687,387	Applicant(s) MCCARRICK, BRYAN	
	Examiner Jack W. Lavinder	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-9 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-9, and 15-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4-9, and 15-22 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bergagnini, 5632164 in view of O'Callaghan, 2748577 and the non-patent literature "A Brief Catechism on the Brown Scapular (BCBS)."

Regarding claims 1, 2, 5, Bergagnini discloses a necklace (39) with a pendant (19, figure 2) secured to the necklace, wherein the pendant has a front and back face forming a cavity therebetween. One of the faces contains an aperture (22, 24) with access to the interior of the cavity (figures 1, 2 and 5), wherein the aperture is located on the outermost surface. Bergagnini places an ornamental array of gemstones within the cavity, viewable and accessible through the aperture (figure 5).

Bergagnini fails to disclose a piece of wool located within the cavity.

O'Callaghan discloses

- a necklace (two chains, 25)
- a pair of pendants (10, col. 2, lines 13-14), which are made out of a metal material (col. 1, line 44)
- a piece of cloth (19)

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- a cavity, i.e., the cavity formed by the u-shaped cross section and rear surface (20) of the frame piece (11, figure 6) and a front surface (17, left numeral 17 in figure 7) of the pendant for receiving the cloth and exposing the cloth from within the cavity through the oval aperture (22) in the rear surface of the frame (20, figure 6)

O'Callaghan fails to disclose the piece of cloth being wool. However, it is notoriously old and well known to place a piece of wool in a religious scapular in remembrance of the monks of the Carmelite Order. The wool is to symbolize the scapular cloth (working clothing) that the monks use to wear as seen in the first paragraph on page 1 and last paragraph on page 2 of BCBS. Therefore, it would have been obvious to a person having ordinary skill in the art to place a piece of wool in the pendant of Bergagnini to act as a reminder of the Carmelite Monks in order to have a more meaningful religious effect on the wearer.

Regarding claims 4 and 6-9, O'Callaghan discloses a scapula with two pendants and two chains for placing the religious symbol on the front and back of the wearer in order for people to see the scapula from the front and the back of the wearer. It would have been obvious to add a second pendant to Bergagnini's necklace in order to see the religious symbol from the front and back of the wearer.

Regarding claim 15, Bergagnini discloses an attachment mechanism (43) for holding the front and rear faces together.

Regarding claims 16-17 and 19-21, Bergagnini discloses fixedly mounting the front and rear surfaces of the pendant together, but fails to disclose a pin and

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a hinge for pivotally attaching the front and rear faces of the pendant.

O'Callaghan discloses an attachment mechanism/pin/hinge (12) for holding the front (17) and rear (20) surfaces together. It would have been obvious to a person having ordinary skill in the art to provide a hinge and a pin for pivotally attaching the front face and rear face of the pendant together. The use of this pivot connection would allow the wearer of the pendant the ability of opening the pendant and replacing the valuable wool with a new piece of wool or other valuable jewelry item. This will provide the pendant with the versatility of being used as a scapula and as ornamental jewelry.

Regarding claims 18 and 22, the examiner takes official notice that the use of a latch on a locket pendant is old and well known to prevent the pendant from prematurely opening and the loss of the contents from the inside of the pendant. It would have been obvious to a person having ordinary skill in the art to add a latch to the already modified pendant to prevent the premature opening of the pendant and the subsequent loss of the cloth material from the inside of the pendant.

Response to Arguments


3. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack W. Lavinder whose telephone number is 571-272-7119. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jack W Lavinder
Primary Examiner
Art Unit 3677

6/13/2006